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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. [redacted]/73

RETAIL CLERKS INTERNATIONAL ASSOCIATION,
LOCAL UNIONS NOS. 128 and 633,
Petitioners,

vs.

LION DRY GOODS, INC.,
and
LaSALLE'S DIVISION OF R. H. MACY & CO.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals for the Sixth Circuit.

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OPINIONS BELOW.

The opinion of the United States District Court for the Northern District of Ohio, Western Division, is reported at 179 F. Supp. 564. The opinion of the United States Court of Appeals for the Sixth Circuit is reported at __ F. 2d, __, and at 47 Labor Relations Reference Manual (LRRM) 2402.

STATEMENT OF JURISDICTION.

The order of the Court of Appeals for the Sixth Circuit was entered on December 15, 1960. By order of this Court by Mr. Justice Stewart, time in which to file this petition was extended to March 28, 1961.

There was no motion made for re-hearing.

Jurisdiction of this Court is based upon 28 U. S. C. Sec. 1254 (1).

QUESTION PRESENTED.

Whether a federal district court may refuse to exercise jurisdiction under Section 301(a) of the Labor-Management Relations Act to enforce arbitration awards rendered pursuant to a strike settlement agreement between an employer and a labor union representing some of its employees.

STATUTE INVOLVED.

The only constitutional or statutory provision involved in this case is Sec. 301(a) of the Labor-Management Relations Act of 1947, 29 U. S. C. Sec. 185(a), which reads as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE.

Petitioners, labor unions in Toledo, Ohio, were the collective bargaining agents for employees of the respondent employers for some twenty years prior to 1957, and were parties to contracts throughout that period. In 1957, negotiations were undertaken for a new agreement, but an impasse was reached. A strike was commenced, with employees of respondent LaSalle's, one of the retail department stores involved, leaving their jobs for the picket line in an effort to secure a new contract. A boycott was instituted at one other store not involved in this litigation,

and the impasse was continued with the respondent Lion Store.

The strike was a particularly long and bitter dispute, lasting more than thirteen months, with picketing and boycotting being carried out through the entire period. It was finally terminated on December 24, 1958, by the execution of the documents upon which this action was based. The Toledo Labor-Management-Citizens Committee, a nationally-known voluntary agency of the city, hereinafter referred to as the L-M-C, mediated the dispute and through its offices, brought about the end of the strike and returned labor peace to the streets of Toledo.

The unions agreed to end all striking, picketing, and boycotting. Although they had been the unchallenged bargaining agent of the employees of respondent stores for more than twenty years, the unions relinquished their claims as majority representatives of the employees of the stores as a part of the settlement. In consideration of these two major union concessions, the respondents executed the documents in issue here which constituted the strike settlement agreement and which make the contract within Sec. 301 of the Act, upon which this action was based.

Respondent LaSalle's agreed to reinstate all the striking employees, warranted that it would not discriminate against them, and executed detailed minimum guarantees of employment conditions, including schedules of wages, hours, and working conditions, which were an integral part of the settlement. Respondent Lion Store executed the same guaranteed employment conditions as a part of its agreement.

These conditions of employment, agreed to by the parties, are of the usual matters contained in every collective bargaining contract. They provided contractual cover-

age for such items, among many others, as: (1) seniority provisions in great detail, (2) call-in pay, (3) commissions and bonuses, (4) overtime compensation, (5) holiday pay, (6) leaves of absence, (7) termination pay, (8) just cause for discharge, (9) vacation schedules, (10) employee discounts, and (11) insurance benefits.

These agreements further contained enforcement machinery in the event employees were denied the benefits provided them. A detailed system of settling and disposing of grievances was provided, with a final step culminating in arbitration before the L-M-C. It was provided that a decision of the L-M-C was to be final and binding on the parties.

Thus, the strike settlement agreement contained every normal and usual element of the traditional collective bargaining contract except recognition of the petitioners as the majority representatives of the more than two thousand employees covered by these agreements.

Shortly after the settlement of the strike, disputes and differences arose between the parties and a number of grievances were referred to the L-M-C for decision. Hearings were held on this first round of grievances, the respondent companies participated fully by counsel, were fully heard on all grievances, and decisions were rendered by the L-M-C on March 12, 1959. Some of the grievances were decided in favor of the respondent companies, and some were remanded back for further consideration. Of the number presented, only two were decided in favor of the unions and the employees, and these two awards became the foundation for the two causes of action set forth in the complaint.

The agreements contained a provision that "nothing herein shall preclude an employee representative from entering areas of the store which are open to customers; or

from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operating of the business." The unions, seeking to make contact with their members and other employees affected by the agreements, and to solicit non-members, were immediately prohibited from sending employee representatives in the store, and upon a grievance based upon such employer refusal, the L-M-C panel members, who had participated in the actual settlement of the strike, decided in favor of the unions. The L-M-C ruling even said, "It must be viewed as a breach of faith on the part of management to create a place where union organizers cannot solicit union membership" (J. A. 6a). The companies sought reconsideration of this ruling, and on April 7, 1959, the L-M-C reaffirmed its decision (J. A. 35a). The second grievance involved assignment by LaSalle's of striking employees to work stations other than those they had occupied prior to the strike, in violation of the agreement, and the L-M-C panel ordered these two employees restored to their former work stations (J. A. 6a-7a).

When the employers refused to abide by the L-M-C rulings, petitioners brought this action in the District Court under Sec. 301 to enforce the arbitration awards of the L-M-C. The District Court, deciding only the question of jurisdiction, stated (J. A. 47a): "* * * we are of the opinion that the strike settlement agreement that was concluded on December 24, 1958, is not such a contract as is contemplated by Sec. 301(a) of the Act, and that, therefore, we do not have jurisdiction over the subject matter."

The court said further, "We believe that the Act, in lodging authority in any District Court of the United States, contemplates such authority to be exercised where

there has been a violation of a contract that had been entered into between an employer and a labor organization representing employees in an industry affecting commerce and that it thereby contemplates a collective bargaining agreement. The agreement that we are here considering is a strike settlement agreement which we cannot construe as having been entered into for the benefit of plaintiffs." The Court concluded (J. A. 48a), "We are of the opinion that collective bargaining contracts between a Union and an employer were the only 'contracts' intended to be actionable in a District Court of the United States under the provisions of Section 301(a), and that none of the factors which give substance to the rights of Unions to bring actions under Sec. 301 are present in this case, and particularly a contract between plaintiffs and defendants."

The Court of Appeals limited its discussion primarily to an endorsement of the decision and holding of the District Court. In its order, the Court of Appeals said: "The contract here involved is not a collective bargaining agreement between an employer and a labor organization representing its employees. We think that the trial court was correct in reaching the conclusion that collective bargaining contracts between a union and an employer are the only contracts intended to be actionable in a United States District Court under the provisions of Section 301(a)."

It is difficult to determine whether the District Court, and the Court of Appeals in its affirmation, was ruling that *only* a traditional collective bargaining contract concerning wages, hours, and working conditions is enforceable under Sec. 301. If such were the foundation for the decisions, then any other kind of a contract between employers and unions representing employees would not be enforceable under Sec. 301, including strike settlement

agreements and other kinds of agreements. Presumably, under such reasoning, strike settlement agreements between employers and unions representing a majority of employees would not be enforceable.

The District Court clearly said, "* * * collective bargaining contracts * * * were the only 'contracts' intended to be actionable," and the Court of Appeals explicitly added, "We think that the trial court was correct in reaching the conclusion that collective bargaining contracts * * * are the only contracts intended to be actionable * * *." The Court of Appeals also said, "The contract here involved is not a collective bargaining agreement between an employer and a labor organization representing employees."

On the other hand, while not fully articulated in its opinion, the District Court may have been ruling that the agreement in this case was not a collective bargaining agreement because the unions did not represent a majority of the employees involved. Some of its language may lead to this conclusion, at J. A. 47a:

> "In the case at bar, the Statements of Understanding specifically point out that nothing contained therein is to be construed as giving recognition to the Union unless, at some future time within the discretion of the Union, the Union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board. At no time have plaintiffs been so certified by the National Labor Relations Board. The Statements of Understanding further provide that the Union agrees that it will not request bargaining rights unless it proves its right to represent the employees, and that the employer will not recognize any Union except upon certification by the National Labor Relations Board."

The District Court's earlier statement that "We believe that the Act * * * contemplates such authority to be exercised where there has been a violation of a contract that had been entered into between an employer and a labor organization representing employees * * *" also supports this view, since one of respondents' major arguments was that the unions did not "represent" employees because they were not certified, or majority, representatives. The succinct statement of the Court of Appeals that, "The contract here involved is not a collective bargaining agreement between an employer and a labor organization representing its employees" lends color to this same position, since it may have been deciding that the agreement was not a collective bargaining contract because the unions did not represent employees because they did not represent a majority.

In either view of what the lower courts were holding, we submit there are serious and far-reaching questions of law involved in the single issue of whether or not the agreements of December 24, 1958, are enforceable as "contracts" under Sec. 301 of the Act. If Sec. 301 is limited to "only" collective bargaining contracts, does this violate the statute which uses the word "contracts" without any modification, and which contains a legislative history which saw Congress eliminate the adjectives, "collective bargaining" from the statute? If Sec. 301 is limited to enforcing only "collective bargaining" contracts, what is a collective bargaining contract? Why are the agreements in this case not collective bargaining contracts, since they were negotiated and executed by labor unions representing substantial numbers of employees (which was a bargain in a collective manner) and since they contained detailed provisions concerning wages,

hours, and working conditions, as well as enforcement machinery?

If the agreements involved in this case are not enforceable because the unions gave up their majority status, and did not, therefore, "represent" employees, does this comply with the statutory language relating to a "labor organization representing employees"? Does the statutory language require majority representation, or must a union only represent some employees? What is the enforcement status of minority union contracts, of which they are many, if this is the correct view of the law?

Is the national labor policy to be served by narrowly limiting the scope of Sec. 301 to "only" collective bargaining contracts, or to "only" contracts where a union represents a majority of the employees involved? Does the national labor policy of promoting the peaceful settlement of disputes by agreement of the parties compel enforcement of salutary agreements of this kind which settled thirteen months of striking, picketing, and boycotting under the statutory language that allows enforcement of "contracts" under Sec. 301? What conceivable policy reasons could be stated to deny enforcement of agreements of this kind which have such a fundamental effect upon interstate commerce?

These are questions of immense significance raised by this case. We respectfully submit that these questions and the issues involved are the most important yet presented to this Court on the scope of Sec. 301, after the basic question of *Lincoln Mills* has been settled. They fully merit review by this Court, as we shall attempt to henceforth demonstrate.

REASONS FOR GRANTING THE WRIT.

(a) IMPORTANCE OF THE QUESTION INVOLVED.

Grave questions concerning rights created by Sec. 301 of the Act,[1] concerning the enforceability of arbitration clauses in contracts,[2] and consideration of the nature of interest of unions, companies, and trustees of welfare funds under collective bargaining agreements,[3] have already been reviewed by this Court. These cases demonstrate not only the impressive public importance of issues arising under Sec. 301, but show further the necessity to afford guidelines for the lower federal courts in administering the variety of complex problems that arise under this statute. At stake in all these cases is the national labor policy of fostering industrial peace.[4]

The national policy of fostering industrial peace is equally at stake in this case. If "only" collective bargaining contracts are enforceable, then industrial strife and burdens on commerce can arise from disputes over all other kinds of agreements between employers and unions. If contracts are enforceable only with majority unions, then all agreements between employers and unions that do not represent a majority may not be enforced in the federal courts, and not only will industrial strife be fomented, but a veritable Pandora's box of other legal problems will quickly arise. Cf. *International Ladies Garment Workers' Union, AFL-CIO v. NLRB and Bernhard-Altmann Texas Corporation*, No. 284, October Term, 1960, now pending in this Court.

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[1] *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448.

[2] *United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U. S. 574; *United Steelworkers v. American Manufacturing Co.*, 363 U. S. 564; *United Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U. S. 593.

[3] *Lewis v. Benedict Coal Corp.*, 361 U. S. 459.

[4] *Textile Workers Union v. Lincoln Mills, supra*, note 1.

1. If only collective bargaining contracts are enforceable

If the lower courts were holding that "only" collective bargaining contracts are enforceable, there are numerous kinds of agreements between employers and unions that might never merit enforcement under Sec. 301. The strike settlement agreement in this case, while presenting an outstanding example, is by no means unique. In the *ILGWU* case, No. 284, now pending, the Court already has before it an example of a strike settlement agreement that preceded a later collective bargaining contract. Would the strike settlement agreement, if the parties had later failed to agree on a collective bargaining contract, have been enforceable under Sec. 301 had it been necessary to sue on such an agreement, aside from the majority representation question involved in that case?

The Court of Appeals for the Fifth Circuit enforced a strike settlement agreement in *Lodge No. 12, IAM v. Cameron Iron Works*, 257 F. 2d 467, although it was tied in with a collective bargaining contract. The District Court for the Southern District of New York enforced a strike settlement agreement in *Farrand Optical Co. v. Electrical Workers Local 475*, 143 F. Supp. 527, without any attempt to hold that it was not a "collective bargaining contract," although it was a specific agreement in settlement of a strike.

The completed nature of the arbitration before the L-M-C in this case brings into play another important consideration in the treatment of enforceable contracts under Sec. 301. Should a union with no collective bargaining status vis-a-vis an employer become involved in a dispute with that employer, perhaps over the discharge of an employee who might have union representation, and should this union and this employer then enter into a

separate submission agreement to submit the particular dispute to an ad hoc arbitrator for a final and binding ruling, and should an award be handed down, would such an award be enforceable under Sec. 301? The submission agreement itself, while in no way a traditional collective bargaining contract, would nonetheless be a contract between an employer and a union representing employees, and in the interest of labor peace ought to be enforceable as a "contract" under Sec. 301. Just as this Court recognized in *Enterprise Wheel and Car, supra*, with regard to an arbitration that "There the need is for flexibility in meeting a wide variety of situations," so it is with the statutory scope of Sec. 301's need for flexibility in meeting a wide variety of situations, such as the kind posed here, or such as the *fait accompli* of an arbitration participated in willingly by the parties followed by an award.

Other kinds of contracts may not be strictly called "collective bargaining" agreements, but they may merit enforcement. The Court of Appeals for the Ninth Circuit enforced an agreement that was primarily a contract to supply labor in *Plumbers and Steamfitters Union v. Dillion*, 255 F. 2d 820 (CA 9, 1958). The Court referred to the agreement in issue as a collective bargaining contract, and although no question was apparently raised concerning its exact status, it is apparent from the Court's opinion that it was an agreement to supply union labor, and not a traditional collective bargaining contract at all.

Amendments to the Act by the Labor-Management Reporting and Disclosure Act of 1959 pose other questions as to whether some contracts are "collective bargaining" contracts and are enforceable. A new Sec. 8(f) has been added to the primary labor statute, permitting unions and employers in the building and construction industry to make pre-hire contracts without violating the unfair labor

practice provisions of the law. Pre-hire contracts are consonant with the widespread use of hiring halls or variations of hiring arrangements in many industries, as this Court well knows. If these contracts contain only recognition agreements and provide for a form of union security, and if they leave negotiation of wages, hours, and working conditions to a later time, are they collective bargaining contracts?

Recognition agreements are commonly executed between employers and unions, leaving for later negotiation substantive terms of employment conditions. Would such an agreement, which provided for no more than recognition, be a "collective bargaining" contract which could be enforced under Sec. 301? A union confronted with a breach of such a contract might have a remedy of compelling the employer to bargain under Sec. 8(a)(5) of the Act, but NLRB procedures might be long and cumbersome, and a Sec. 301 action might provide the best and quickest remedy.

Many unions frequently make licensing agreements with employers for the use of union labels. See *Werne, Law and Practice of the Labor Contract*, Sec. 20.30. These are not traditional collective bargaining agreements, but they serve a highly useful purpose in labor-management affairs. Do they deserve enforcement under Sec. 301?

Agreements between employers and unions for the settlement of jurisdictional disputes are common place. See *Werne, supra*, Sec. 20.60. They might not be called collective bargaining agreements, but their great utility in preserving industrial peace is obvious. Do they merit enforcement under Sec. 301?

Agreements between employers and unions to establish peaceful procedures for determining representation status are also common. Unions and employers often make

agreements to hold elections outside the procedures of the National Labor Relations Board, as they have every right to do. One such example was provided in *United Public Workers v. University of Chicago*, 23 LRRM 2352 (Ill. Cir. Ct., 1949), at a time when the NLRB would not assert its statutory jurisdiction over universities. The contract was not a collective bargaining agreement since the union was agreeing only to a determination of whether or not it represented a majority. It must have represented some employees for it to become a party to any such kind of agreement. But would such a contract be enforced under Sec. 301 if the statutory term, "contracts," is interpreted to mean "only" collective bargaining agreements?

In addition, inherent difficulties arise in defining tight lines around the meaning of the term "collective bargaining." The term as used in Sec. 7 where it is stated that "Employees shall have the right * * * to bargain collectively through representatives of their own choosing * * *" appears to have evolved from the historic concept of employees acting together in groups rather than individually.[5] The Wagner Act contained no definition of collective bargaining and the definition contained in LMRA in Sec. 8(d) in 1947 defined the term for the purpose of Sec. 8's unfair labor practice provisions, which relate to the *duty* to bargain with a majority representative.

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[5] See testimony of then Secretary of Labor Frances Perkins, testifying in hearings on the bill which became the National Labor Relations Act, 1 Leg. His. N. L. R. A. 1935, p. 1433. Miss Perkins said: "I understand it was Beatrice and Sidney Webb who originated the term 'collective bargaining.' The term seemed appropriate since the workers were no longer carrying on individual negotiations with the employer, but they attempted to get agreements with regard to their work as a group rather than individuals, and the same rule was to apply to all of the groups rather than to apply to John Jones and Sam Smith."

When one applies the historic meaning of collective bargaining, it is difficult to argue that the agreements in this case were not arrived at through collective bargaining. The unions acted collectively for great numbers of employees who were their members. They were able to secure jobs for the striking employees, secured for them guaranteed minimum terms and conditions of employment, and obtained a grievance procedure for enforcement of their rights. This was collective action in the purest sense.[6]

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[6] Special characteristics of the collective bargaining contract were set forth in 70 Yale L. J. 611, 615, f.n. 29, which were gleaned from the opinion of Mr. Justice Douglas in *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 578-82, and from Shulman, Reason, Contract and Law in Labor Relations, 68 Harv. L. Rev. 999 (1955), and from Cox, Reflections Upon Labor Arbitration, 72 Harv. L. Rev. 1482 (1959). A general listing of these characteristics, which apply in almost every instance to the strike settlement agreement in this case, was as follows:

"(1) Whereas in the case of commercial contracts, 'arbitration is the substitute for litigation,' in the collective bargaining situation, 'arbitration is the substitute for industrial strife.' 363 U. S. at 578.

(2) The collective agreement is a 'generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate.'

(3) 'One unique characteristic (of a collective agreement) is the number of people affected.' Cox, *supra*, at 1490.

(4) 'A collective bargaining agreement also covers a wide range of conduct and enormous variety of problems.'

(5) 'A labor contract operates prospectively over substantial periods . . . Not all commercial contracts, but surely those which are most familiar, relate to a single transaction . . . Since one can hardly foresee all the problems that will develop in an industrial establishment within even a single year, more scope must be left for decisions made in the course of performing the agreement.'

(6) 'The parties to a collective agreement share a degree of mutual interdependence which we seldom associate with simple contracts . . . When most parties enter into contractual relationship they do so voluntarily, in the sense that there is no real compulsion to deal with one another, as opposed to dealing with other parties. This is not true of the labor agreement.' 363 U. S. at 580."

2. If contracts are enforceable only with unions that represent a majority.

But if one defines "collective bargaining" as a process that takes place only with a majority representative, then equally serious and far-reaching questions are posed. If the lower courts in this case were in fact ruling that the agreement was 1. not a collective bargaining contract because it was not made with a majority representative, or 2. not a collective bargaining contract because the unions did not "represent" employees because they did not represent a majority (in either event, the majority concept principle is presented), then the public importance of this case is equally formidable as if the decisions below were founded solely on the grounds that a strike settlement agreement was not a typical collective bargaining contract.

The holding of the Court of Appeals for the Ninth Circuit in *Plumbers and Steamfitters Union v. Dillion*, 255 F. 2d 820, stands squarely for the proposition that a contract may be enforced under Sec. 301 without the necessity of majority representation. In that case, the union not only failed to represent a majority of employees of the employer, but it represented *none of them*, since it failed to supply him any workmen!

Contracts with unions that did not represent a majority of employees have had an important and impressive history in American labor relations.[7] Members-only contracts were the dominant kinds of agreements in the automobile and steel industries in the early years after 1937. This Court in *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 232, 236-238, specifically upheld the propriety of a

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[7] Brief for Petitioner, No. 284, *ILGWU v. NLRB and Bernhard-Altmann Texas Corp.*, pp. 92-95 incl., and authorities cited therein, particularly 2 LRRM 959, 964.

members-only contract and detailed its wholesome effects, at 305 U. S. 197, 237:

> "They simply constitute the Brotherhood the collective bargaining agency for those employees who are its members * * * Moreover, the fundamental purpose of the Act is to protect interstate and foreign commerce from interruptions and obstructions caused by industrial strife. This purpose appears to be served by these contracts in an important degree. Representing such a large percentage of the employees of the companies, and precluding strikes and providing for the arbitration of disputes, these agreements are highly protective to interstate and foreign commerce."

Members-only contracts are still in wide use today, as reports of the National Labor Relations Board indicate. The Board has frequent occasion to pass on such agreements when they are interposed as bars to representation elections, see *Pittsburgh Plate Glass Co.*, 111 NLRB 1210; *Liggett & Myers Tobacco Co.*, 98 NLRB 1330; *Cargo Packers*, 109 NLRB 1184; *Solventol Chemical Products*, 113 NLRB 617, and many others. While members-only agreements do not bar representation elections, they often serve highly useful industrial and social purposes, as this Court recognized in *Consolidated Edison Co., supra.*

The pre-hire agreements now permitted by Sec. 8(f) would not involve majority representation, since they would be executed before the hiring of any employees at all. The outside election agreement as typified in *United Public Workers v. University of Chicago, supra*, could not have involved majority representation, since the union was seeking to establish its majority by the electoral process.

There are other agreements between employers and unions where it may not always be established that a

union represents a majority at the time of execution of the agreement. The complexities which may be involved in this kind of situation undoubtedly contributed to this Court's grant of a petition for certiorari in *ILGWU v. NLRB and Bernhard-Altmann Texas Corporation*, No. 284, now pending, and the complexities flowing from any holding that a contract between an employer and a union may not be enforced under Sec. 301 if at the time of execution, the union did not represent a majority. would be equally of great significance. Yet this seems precisely what the lower courts in this case are holding, if they rest upon the concept that a collective bargaining contract was not involved because the unions did not represent a majority of the employees.

If the lower courts were holding, as we believe their unarticulated reasoning indicates, that the agreements were not collective bargaining contracts because the unions did not "represent" employees, then they are in complete derogation of the scope and intent of this Court's holding in *United States v. Ryan*, 350 U. S. 299. There the argument was made that the term "representative," in Sec. 302 of the Act should be narrowly construed to mean only "exclusive bargaining representative." This is analogous to the underlying rationale of the lower courts in this case, who were in effect saying that the term "representing" must mean "exclusive bargaining representative," or "majority representative," if this was in fact the basis for the ultimate rulings.

This Court disposed of this narrow approach in *Ryan* when it said:

> "It is insisted that this interpretation clashes with the use of the term 'representative' in various sections of the NLRA. In the majority of the examples given the scope of the term is made clear by other words in the provisions themselves (f.n. 7). But further, the

> provisions in the LMRA that 'representative' shall have its NLRA meaning is no more applicable to Sec. 302 than to any other section of the LMRA, and in several other sections of that Act it is patent that 'representative' cannot be construed to include only the exclusive bargaining representative. For example, Sec. 204(a) refers to 'employees and their representatives,' and Sec. 211(a) refers to 'interested representatives of employers, employees, and the general public.' There are other examples, but these are sufficient. If the severely restricted construction contended for the word 'representative' is inapplicable to one section of the LMRA, there is no compulsion to apply it to any other section."

The same reasoning applies here. Furthermore, if Congress had in any way intended to confine the term "representing" to majority representative, it could have easily said so, as it did in other provisions of the Act, such as Sec. 8(a)(5), Sec. 8(b)(3), Sec. 8(d). If the lower courts were rejecting jurisdiction because of the lack of majority they would have had to interpret Sec. 301 to read in this manner: "Suits for violation of contracts between an employer and a labor organization representing employees *subject to the provisions of Sec. 9(a)* in an industry * * *" which is an insertion of critically important words that simply are not there.

Therefore, if the courts below were holding that "only" a traditional collective bargaining contract can be enforced under Sec. 301, this case presents issues of great public importance in the establishment of industrial peace. If, on the other hand, the courts were holding that the strike settlement agreement involved in this case was not a collective bargaining contract because the unions did not represent a majority of the employees involved, then the issues of are equally compelling importance. Either view is sufficient to support a grant of the writ.

(b) POTENTIAL CONFLICTS BETWEEN COURTS OF APPEALS ARE INVOLVED.

If the holding of the Court of Appeals was based on the proposition that only traditional collective bargaining contracts may be enforced under Sec. 301, such ruling is in potential conflict with that of the Court of Appeals for the Fifth Circuit in *Lodge No. 12, IAM v. Cameron Iron Works, supra*, although the strike settlement agreement was tied in with a traditional collective bargaining agreement in that case. The decision below is in square opposition to the District Court ruling that enforced a strike settlement agreement in *Farrand Optical Co., supra.*

If the holding of the lower courts was based upon the lack of majority status of the unions, it is in conflict with the Court of Appeals for the Ninth Circuit in its decision in *Plumbers & Steamfitters Union v. Dillion, supra*, even though that holding did not discuss or treat the majority concept. This is so because the union there represented no employees of the particular employer at all. In addition, as we have already pointed out, if this was in fact the basis of the holding, then the necessarily restrictive meaning given to the word "representing" is contrary to this Court's holding in *United States v. Ryan, supra.*

(c) THE ERRONEOUS RULINGS BELOW DRASTICALLY INTERFERE WITH THE NATIONAL LABOR POLICY.

This Court has stated over and over again the importance of the national policy as established by legislation in preventing strikes and industrial discord. This was a fundamental consideration in *Consolidated Edison Co. v. NLRB supra*, has been re-stated time and time again, was enunciated once more in *Lincoln Mills, supra*, and repeated in the awareness in *Warrior and Gulf, supra*, of the sub-

stitution of "a regime of peaceful settlement for the older regime of industrial conflict." Courts, in any interpretation of Sec. 301, must not ignore the impact of the national labor policy, *Lewis v. Benedict Coal Co.*, 361 U. S. 459. Regrettably, the same lower court that wholly ignored the impact of the national labor policy in *Benedict Coal Co.* has repeated its neglect of that important consideration in this case.

Congress, when it enacted Sec. 301, gave us a legislative history that indicates it did not want severe verbal limitations placed upon the meaning of that provision, which is another powerful indication of the national labor policy. This Court is referred to a comprehensive legislative history of Sec. 301 as appended to the dissenting opinion in *Lincoln Mills, supra*, which shows that H. R. 3020, the House bill that passed that body, contained in a revised Sec. 302 (a) the reference only to the word, "agreement," without any qualifying adjective. 353 U. S. at 516. H. R. 245, accompanying the bill, contained repeated references to suits for "contract violations" and "violations of contracts" without in any way qualifying the scope of the language.

In the Senate in 1947, S. 1126, the Taft bill that was passed, did have the phrase "collective bargaining," in it, and Senate Report No. 105 also spoke in terms of "collective bargaining contracts." 353 U. S. at 530. In addition, if one wishes to be pleasingly selective about his legislative history, ample references may be found in Senate proceedings to the use of the term, "collective bargaining," although no one even purported to give an exact definition of what the term meant.

In conference, however, the House version prevailed, all reference was deleted to collective bargaining, and

the language of the Act today in the use of the simple word "contracts" emerged. By eliminating the qualifying words, "collective bargaining," it is submitted that Congress intended to allow a far broader scheme to the enforcement of contracts between employers and unions that accorded with the national labor policy of promoting industrial peace. At least one District Court reached this same conclusion upon a careful examination of the legislative history, when it was said in *Burlesque Artists v. American Guild of Variety Artists*, ___ F. Supp. ___ (SD, NY 1958), 42 LRRM 2818: "In eliminating the 'collective bargaining' phrase Congress must have envisioned a broader scope for the word 'contracts'."

The legislative history goes to demonstrate that the holdings of the lower courts in this case are simply erroneous if they assumed that Congress allowed enforcement for "only" collective bargaining agreements. In addition, from the language of the statute itself, it is quite evident that Congress did not intend to limit the meaning of the term "contracts" to collective bargaining contracts alone. Section 301(a) provides for enforcement of "contracts" between labor organizations, as well as "contracts" between an employer and a labor organization. The "contracts" between labor organizations which Congress provided might be enforced in the federal courts obviously are not "collective bargaining contracts." Therefore, if the phrase "contracts" as applied to suits between labor organizations could not have been intended to be limited to collective bargaining contracts, there is no sound reason in policy why the same term—"contracts"—must mean collective bargaining contracts in suits between an employer and a labor organization. *United Textile Workers v. Textile Workers Union of America*, 258 F. 2d 743 (CA 7, 1958).

But the harmfulness of the error is not so much in being wrong, but in placing serious impediments in the way of the national labor policy, and that is the important issue in this case upon which we seek review. We are certain, however, that this Court, as a principal declarant of the national labor policy as enacted by Congress, is more fully aware of the importance of this issue than we can demonstrate. But its language years ago in *Consolidated Edison, supra,* at 305 U. S. at 237, still has important meaning for this case, when it was said:

"Moreover, the fundamental purpose of the Act is to protect interstate and foreign commerce from interruptions and obstructions caused by industrial strife." This settlement agreement did exactly that, by settling a serious strike and terminating picketing and boycotting in a major American city. "This purpose appears to be served by these contracts in an important degree." This purpose was admirably served by the strike settlement agreements in this case, as is readily apparent to everyone. "Representing such a large percentage of the employees of the companies, and precluding strikes and providing for the arbitration of disputes, these agreements are highly protective to interstate and foreign commerce." These words apply here with equal force. Petitioners represented great numbers of employees of the companies when these agreements were signed, and they precluded any further strikes and boycotting, and provided for the arbitration and peaceful settlement of disputes through the L-M-C. As such, these agreements are "highly protective to interstate and foreign commerce."

When one views the stake of industrial peace in these agreements, it is indeed difficult to understand why the lower courts were more concerned with finding ways to

eschew jurisdiction than in decreeing an enforcement which would have a wholesome effect. The national policy issue is critical; it has been ignored totally; its needs reinstatement to its proper place; only review by this Court can correct the egregious errors below and re-emphasize again for the guidance of all lower federal courts that the cause of promotion of industrial peace simply must be taken into account in dealing with any "contracts" under Sec. 301 of the Act.

CONCLUSION.

For all the reasons hereinabove set forth, petitioners respectfully urge that this petition for a writ of certiorari be granted.

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APPENDIX A.

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.

MEMORANDUM OPINION.

(Filed December 21, 1959.)

KLOEB, *J.*:

Plaintiffs filed this action in this Court pursuant to Section 301 of the Labor-Management Relations Act of 1947, 61 Stat. 156, 29 U. S. C. A., Sec. 185 (a).

The amended complaint filed June 19, 1959 outlines two causes of action against the defendants, and prays in the first cause of action for an order of the Court requiring the defendants to permit non-employee representatives of plaintiffs to have access to areas of the stores of defendants, to wit, employees' cafeterias, which are not open to customers. In connection with the second cause of action, plaintiffs seek an order of the Court requiring the defendant LaSalle's to place two employees who were returned to work after the strike had ended on December 24, 1958, in their position classifications, and at the precise stations in the Men's Furnishings Department that they had occupied prior to the strike.

Attached to the amended complaint is Exhibit A, a letter from defendant LaSalle's to the chairman of the Toledo Labor-Management-Citizens' Committee, a Committee that had been engaged in mediating the differences between the respective parties and matters involved in the strike, which letter was accompanied with a "Statement of Understanding," with exhibits, all being offered to the Labor-Management-Citizens' Committee by the defendant LaSalle's.

There is also attached to the amended complaint Exhibit C, which is a letter from plaintiffs addressed to the Labor-Management-Citizens' Committee, in which they agree to the conditions and guarantees of the "Statement of Understanding."

There are also attached to the amended complaint Exhibits D, E and F, which are documents pertaining to defendant Lion Dry Goods, Inc., and which are comparable to the LaSalle exhibits heretofore referred to.

Under date of June 29, 1959, defendants filed their answer to the amended complaint, in which they set up three defenses, first, that the Court lacks jurisdiction over the subject matter, second, that the amended complaint fails to state a claim against either defendant upon which relief can be granted, and, third, that there is not in existence a contract between the plaintiffs and the defendants or either of them, as contemplated by or provided for in the Labor-Management Relations Act of 1947, and particularly Section 301 (a) thereof.

On October 15, plaintiffs filed their brief and, on October 26, defendants filed an answer brief. On November 2, plaintiffs filed a reply brief.

On November 6, in connection with oral argument, the parties filed a stipulation, which reads in part as follows (pages 2 and 3):

> "It is further stipulated by and between counsel for the parties that the plaintiff Unions and the defendants, individually, have not engaged in collective bargaining with respect to wages, hours and other terms and conditions of employment pertaining to employees of either of the defendants or for the purpose of the negotiation of an agreement concerning wages, hours, or other terms of employment, or any questions arising thereunder, or negotiations for the execution of a written contract incorporating therein

any agreement negotiated or reached between the parties; and it is further stipulated between counsel that none of the rates of pay, wage schedules, terms and conditions of the personnel policy and program, or other provisions or conditions contained in the entire plaintiffs' Exhibit B were negotiated as a result of bargaining or negotiations between either of the defendants and the Toledo Labor-Management-Citizens Committee acting for or on behalf of the plaintiff Unions; and it is further stipulated that all of the provisions contained in plaintiffs' entire Exhibit B, with the exception of Item No. 40 appearing at the last page of said exhibit, were in force and effect prior to December 24, 1958. Nothing in this paragraph is to preclude the Court from finding that the settlement of Dec. 24, 1958, was a collective bargaining agreement.

"It is further stipulated by and between counsel for the parties that the employee cafeterias in the downtown stores of the defendants and of the Lamson Brothers Company are located in areas in each of the stores not open to customers; and it is further stipulated between counsel that the LaSalle employees, McGinnis and Thal, were, prior to leaving their employment because of a strike on or about November 23, 1957, employed as salesladies in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that upon their return to work at LaSalle's after December 24, 1958, each was employed as a saleslady in the Men's Furnishings Department in the highest wage classification provided in the wage schedules then in effect, and that the only difference in their work assignments upon their re-employment after December 24, 1958 was in the station to which each was assigned to work within the Men's Furnishings Department; the one formerly assigned to the station where men's shirts were sold was assigned to the station where men's sweaters were sold, with

the other being assigned to stations in reverse of the ones just mentioned, that is, her later assignment being shirts as compared to her former assignment of sweaters."

It appears that, in November of 1957, plaintiffs, who at some prior time had been the recognized bargaining agents for the Retail Associates, Inc., comprised of four downtown department stores in Toledo, Ohio, and including the two defendants herein, called a strike against the four members of the Retail Associates, Inc. During the period of the strike, from November of 1957 to December 24, 1958, plaintiffs were not and do not claim to have been and are not now the recognized majority representatives of the employees of defendants. They do not claim to have such rights. They admit that they do not represent a majority of the employees of the defendants, but they say that they do represent some employees and that because of this representation they are entitled to petition for the enforcement of a contract under Section 301 (a).

A few days prior to December 24, 1958, a plan was advanced by the chairman of the Toledo Labor-Management-Citizens' Committee whereby it was suggested that, if defendant LaSalle's would re-employ the strikers, plaintiffs would disclaim that they represented a majority of the employees of defendants. At that particular time LaSalle's was the only store where workers were out on strike.

Upon the presentation to the Labor-Management-Citizens' Committee of the exhibits heretofore referred to and that are attached to the amended complaint, picketing ceased and the strike was declared off. Employees of defendants LaSalle's were restored to work in due course in accordance with the Statement of Understanding.

It appears now that the defendants refuse to permit certain representatives of plaintiffs to enter the employees' cafeteria for the purpose of soliciting membership. This the plaintiffs complain of in their first cause of action in the amended complaint. Paragraph 6 of Exhibit B attached to the complaint reads in part as follows:

> "* * * Nothing herein shall preclude an employee representative from entering areas of the store which are open to customers; or from communicating with employees, provided such communication is on the employee's non-working time and in no way interferes with the operating of the business."

Defendants claim that the employees' cafeteria is an area which is not open to customers and that, therefore, plaintiffs' agents are precluded from communicating with defendants' employees in these areas. Plaintiffs are of the opinion that they have a right to communicate with defendants' employees in these areas provided such communication is on the employees' non-working time and in no way interferes with the operation of the business of the defendants.

Plaintiffs' second cause of action is based on the ground that, while employees McGinnis and Thal, who up to December 24, 1958, were striking employees, and were re-employed as salesladies in the Men's Furnishings Department following their return to work, they were not again stationed at the exact counters theretofore occupied by them but that they were caused to exchange their positions at the shirt and sweater counters. There is no dispute but that the rate of pay was not reduced upon their return to work and that their earnings and earning opportunities are not changed.

The grounds relied upon in these two causes of action appear to be tenuous indeed and to be based on grievances that are not weighty in character. However, they do provide a "causus belli." Whether there is justification for taking the time of a Court because of these differences between the parties is open to grave question.

It is plaintiffs' position that the Statements of Understanding presented by defendants to the Labor-Management-Citizens' Committee and the subsequent concurrence in these statements by plaintiffs constitute a contract, at least a contract for the benefit of plaintiffs, and that it is, therefore, such a contract as is contemplated by Section 301 (a) of the Act.

Section 301 (a) of the Act, 29 U. S. C. A. Sec. 185 (a), reads as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

It is the contention of the defendants that, while Section 301 (a) refers to contracts between an employer and a labor organization representing employees, this has reference to collective bargaining contracts, or agreements arrived at through collective bargaining, and could not have reference to the situation that obtains here.

From a study of the legislative background of the Act, and from certain decisions that we have examined, we are of the opinion that the strike settlement agreement that was concluded on December 24, 1958 is not such a contract as is contemplated by Section 301(a) of the Act, and that,

therefore, we do not have jurisdiction over the subject matter.

The plaintiffs have cited and apparently rely upon the cases of *Local 19, etc. v. The Buckeye Cotton Oil Company*, 236 Fed. (2d) 776, and *A. L. Kornman Company v. Amalgamated Clothing Workers of America*, 264 Fed. (2d) 733, cert. den. Oct. 12, 1959.

These are cases that were decided by the Sixth Circuit Court of Appeals but, upon examination, we find that they both grow out of disagreements over existing collective bargaining agreements that were duly entered into by the parties under and in accordance with the provisions of the Act.

In the case at bar, the Statements of Understanding specifically point out that nothing contained therein is to be construed as giving recognition to the Union unless, at some future time within the discretion of the Union, the Union is certified as having been chosen by a majority of employees in a single store unit election conducted by the National Labor Relations Board. At no time have plaintiffs been so certified by the National Labor Relations Board. The Statements of Understanding further provide that the Union agrees that it will not request bargaining rights unless it proves its right to represent the employees, and that the employer will not recognize any Union except upon certification by the National Labor Relations Board.

We believe that the Act, in lodging authority in any District Court of the United States, contemplates such authority to be exercised where there has been a violation of a contract that had been entered into between an employer and a labor organization representing employees in an industry affecting commerce and that it thereby contemplates a collective bargaining agreement. The agreement that we are here considering is a strike settlement agree-

ment which we cannot construe as having been entered into for the benefit of plaintiffs.

In the case of *Schatte, et al. v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of United States and Canada, et al.*, 84 Fed. Supp. 669, aff. 182 Fed. (2d) 158, cert. den. 340 U. S. 827, we find the following (p. 672, par. 4):

> "Whatever else may be said (and a great deal has been said in scores of pages of briefs and more than three full days of argument), any right of recovery under Section 301 must rest upon a *contract* and its asserted violation. *The whole Act relates to labor contracts, hence it must be a contract contemplated by the Act, i.e., a collective bargaining contract or contract relating to fair or unfair labor practices.* * * *" (Emphasis supplied.)

On page 673, pars. 7 and 8, we find the following:

> "The plaintiffs contend that in any event they are appropriately parties plaintiff under Rule 23, Federal Rules of Civil Procedure, 28 U. S. C. A., relating to class suits. Whether they do or could qualify under that rule is not necessary to determine as the provisions of Sec. 301 are inconsistent with Rule 23, Federal Rules of Civil Procedure, and must therefore prevail. *Sec. 301 is a special and limited grant of jurisdiction which must be strictly construed.* This is especially so in the light of the history of legislation dealing with labor relations and disputes such as the Clayton Act, 15 U. S. C. A. § 17, the Norris-LaGuardia Act, 29 U. S. C. A. § 101 et seq., the Wagner Act, 29 U. S. C. A. § 151 et seq., and the Act under consideration." (Emphasis supplied.)

We are of the opinion that collective bargaining contracts between a Union and an employer were the only "contracts" intended to be actionable in a District Court of the United States under the provisions of Section

301(a), and that none of the factors which give substance to the rights of Unions to bring actions under Section 301 are present in this case, and particularly a contract between plaintiffs and defendants. We, therefore, conclude that the Court is without jurisdiction to entertain this case, and the complaint is, therefore, dismissed.

Defendants may prepare and file findings of fact and conclusions of law drawn in accordance with this Memorandum Opinon within fifteen (15) days, and the plaintiffs may, within ten (10) days thereafter, file any suggested amendments or additions thereto.

(signed) FRANK L. KLOEB,

United States District Judge.

Toledo, Ohio.

APPENDIX B.

OPINION AND ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, NO. 14,176, DECEMBER 15, 1960.

This appeal from the judgment of the United States District Court, dismissing the complaint of appellants, has been heard and considered upon the record and upon the oral arguments and briefs of the parties.

This court is of opinion that the district court correctly construed Section 301 of the Labor-Management Relations Act of 1947 (29 U. S. C. A., Section 185 (a)) and was free from error in holding that it had no jurisdiction over the subject matter of the litigation. The contract here involved is not a collective bargaining agreement between an employer and a labor organization representing its employees. We think that the trial court was correct in reaching the conclusion that collective bargaining contracts between a union and an employer are the only contracts intended to be actionable in a United States District Court under the provisions of section 301(a).

In our judgment, United States District Judge Kloeb was right in concluding that he was without jurisdiction in this case. He, therefore, properly dismissed the complaint.

Accordingly, for the reasons stated in the opinion of the District Judge, the judgment of the district court is affirmed.

It is so ordered.